



Request for Proposals

Williamsburg-James City County Public Schools

James City County Purchasing Office
101-F Mounts Bay Road
Williamsburg, VA 23185
Phone: (757) 253-6648
Fax: (757) 253-6753

Williamsburg-James City County Public Schools
REQUEST FOR PROPOSALS
13-5450

Title: Universal Screen Instruments Mathematics for Grades 2-8

Issue Date: September 4, 2012

Due Date: September 26, 2012

Deliver To: James City County Purchasing Office
101-F Mounts Bay Road, Suite 300
Williamsburg, VA 23185

Submit: Original and ten (10) Copies

Inquiries: Questions pertaining to this project should be directed to Linda Hodges, Senior Buyer, at email: linda.hodges@jamescitycountyva.gov no later than 2:00 P.M. on August 18, 2012.

This public body does not discriminate against faith-based organizations.

In compliance with this unsealed Request for Proposal and subject to all the conditions thereof, the undersigned offers to furnish the goods/services requested and certifies he/she has read, understands, and agrees to all terms, conditions and requirements of this bid and is authorized to contract on behalf of the firm named below.

My signature on this solicitation constitutes certification that I or my designated representative have inspected the job site and am aware of the conditions under which the work must be accomplished. Claims, as a result of failure to inspect the job site, will not be considered by the County. By my signature on this solicitation, I certify that this firm/individual is properly licensed for providing the goods/services specified.

The Undersigned certifies that he (they) are the only person (persons) interested in said project and that it is made without connection with other persons submitting a proposal on the same scope of services; that the proposal is made without collusion, fraud, or reservation; that no official or employee of the Owner is directly or indirectly interested in said proposal, or any portion thereof.

PROPRIETARY INFORMATION

YES () NO ()

Trade secrets or proprietary information is hereby submitted and identified. Reasons for protection and exclusion from the Virginia Freedom of Information Act (2.1-340 et seq.) are set forth below. (Additional sheet may be added if necessary.)

Name of Person, Persons, or Corporation _____

By: _____ Date: _____

Print Name: _____ Title: _____

Contractor's Registration and Signature (Provide copy with Proposal)

Registered Virginia Contractor Class and No.: _____

Registration Expires: _____

State Corporation Commission ID #: _____

Company Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____ FAX: _____

Email Address: _____

Federal Tax ID: _____

Print Name: _____ Title: _____

Signature: _____ Date: _____

This form must be signed in ink. All signatures must be original.

ACKNOWLEDGE RECEIPT OF ADDENDUM: #1____ #2____ #3____ #4____ (Please Initial)

***SCC Requirement per the Virginia Public Procurement Act, VPPA:**

§ 2.2-4311.2. Compliance with state law; foreign and domestic businesses authorized to transact business in the Commonwealth. -- A. All public bodies shall include in every written contract a provision that a contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

B. Pursuant to competitive sealed bidding or competitive negotiation, all public bodies shall include in the solicitation a provision that requires a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 to include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.

C. Any bidder or offeror described in subsection B that fails to provide the required information shall not receive an award unless a waiver of this requirement and the administrative policies and procedures established to implement this section is granted by the Director of the Department of General Services or his designee or by the chief executive of a local governing body.

D. Any business entity described in subsection A that enters into a contract with a public body pursuant to this chapter shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract.

E. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

***Virginia State Corporation Commission (“SCC”) registration information: The undersigned Offeror:**

☐ is a corporation or other business entity with the following SCC identification number: _____ **-OR-**

☐ is not a corporation, limited liability company, limited partnership, registered limited liability partnership, or business trust **-OR-**

☐ is an out-of-state business entity that does not regularly and continuously maintain as part of its ordinary and customary business any employees, agents, offices, facilities, or inventories in Virginia (not counting any employees or agents in Virginia who merely solicit orders that require acceptance outside Virginia before they become contracts, and not counting any incidental presence of the Offeror in Virginia that is needed in order to assemble, maintain, and repair goods in accordance with the contracts by which such goods were sold and shipped into Virginia from bidder’s out-of-state location) **-OR-**

☐ is an out-of-state business entity that is including with this bid an opinion of legal counsel which accurately and completely discloses the undersigned Offeror’s current contacts with Virginia and describes why those contacts do not constitute the transaction of business in Virginia within the meaning of § 13.1-757 or other similar provisions in Titles 13.1 or 50 of the Code of Virginia.

****NOTE**** >> Check the following box if you have not completed any of the foregoing options but currently have pending before the SCC an application for authority to transact business in the Commonwealth of Virginia and wish to be considered for a waiver to allow you to submit the SCC identification number after the due date for proposals (the Commonwealth reserves the right to determine in its sole discretion whether to allow such waiver): ☐

RETURN SIGNED COVER SHEET (ALL PAGES) WITH PROPOSAL



**WILLIAMSBURG/JAMES CITY COUNTY PUBLIC SCHOOLS
REQUEST FOR PROPOSALS
Universal Screen Instruments Mathematics for Grades 2-8
13-5450**

I. PURPOSE

The purpose of this Request for Proposal (RFP) is to solicit **Sealed** Request for Proposals to establish a contract through competitive negotiation for the Williamsburg-James City County Public Schools for a Universal Screen Instruments Mathematics for Grades 2-8 to provide a universal screening and curriculum based measurements to support a Response to Intervention initiative. The solution will provide educators with a tool to identify areas of weakness and/or strengths for each student so that specific extension and/or remediation objectives can be developed for each child to better facilitate their learning in correlation to the VA SOL's.

The Owner intends to award a contract for services as outlined herein to qualified licensed and experienced company. All the necessary staffing, management, supervision, materials, equipment and supplies shall be provided by the company to complete the required identified services.

Upon successful completion of the evaluation process, negotiation and award, the contract will be executed, and a contract will be issued. Project work shall begin upon issuance of written Purchase Order by the Purchasing Office.

Williamsburg-James City County Public Schools reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with a qualified firm or to modify or cancel in part or in its entirety the Request for Proposal, if it is in the best interest of Williamsburg/James City County Public Schools to do so.

II. BACKGROUND

Williamsburg-James City County Public Schools is located near Historic Williamsburg, Virginia. It is a growing, urbanizing community of 141 square miles with an estimated population of 63,135. The WJCC Public School system is a rapidly growing school system. At the present time there are three (3) high schools with grades 9-12; three (3) middle schools consisting of grades 6-8, and nine (9) elementary schools house grades K-5.

Projected student enrollment for school year 2012-2013 is:
Grades 2-5; 3,209 students
Grades 6-8; 2,566 students

III. STATEMENT OF NEEDS:

The Contractor shall provide a program that will enable WJCC staff to analyze student instructional level, provide recommendations for student extension or intervention and provide student progress and growth

data. In addition, the software will allow secure and easy access to data and reports at the teacher, school, and division level. Any software accepted as a result of this RFP must have the capability to be enhanced and upgraded to meet the demands of the school system.

The Contractor's Mathematics program should be designed for identification of student instructional level, to include low math scoring general education students, special education students, and English Language Learners. This program(s) should provide research-based, systematic, explicit instruction to capture the student's interest and teach them essential skills and strategies to accelerate learning in math. The Mathematics Intervention Program must provide the following, at a minimum:

- Research-based, explicit, systematic assessment in mathematical concepts, critical thinking skills, problem solving and vocabulary based on the following strands;
 - Number and Number Sense
 - Computation and Estimation
 - Patterns, Functions and Algebra
 - Geometry and Measurement
- Demonstrated evidence of effectiveness in measuring student math proficiency.

The universal screening instrument would be administered in the beginning, middle and end of the school year to measure individual student growth. Curriculum based measurements will be used as continuous formative assessment of each student's performance on regular intervals as needed. The selected provider shall offer a program that will encompass the universal screening instrument collection of data and the ability to provide disaggregation of that data, allow secure and easy access to data and reports at the teacher, school, parent, and division level. In addition, the vendor shall provide a comprehensive training and ongoing support to staff on all aspects of the assessment, results, and reporting product. A single toll free support line must be available during prime-time hours (Monday-Friday 8 AM to 5 PM EST, excluding holidays). Vendor must agree to begin to evaluate and provide a solution within two (2) prime-time hours from the time the call is placed.

The program shall provide the following:

- Administration and scoring to students shall be on-line testing format.
- Should be export information CSV file type format.
- Shall be a one-time purchase to include maintenance.
- Assessment shall be short in length to administer (not more than 60 minutes).
- Reports student Quantile Levels
<http://www.metametricsinc.com/quantile-framework-mathematic/>
- Should be able to be administered three (3) times a year per Response to Intervention.
- Shall be able to report growth over time.
- Shall provide a Parent Report.
- The universal screening instrument must have valid and reliable items that best assess student understanding of skills and content.
- Items should include the use of graphs, charts, pictures and mathematical equations.
- The items must be aligned, by content, cognitive level, format, and vocabulary with the Virginia's Standards of Learning and report on student attainment of those learning standards.
- The assessment must be designed to be given at multiple times during the school year.
- The electronic layout must be user-friendly.
- Administration directions must be standardized, explicit, and understandable.
- The program will provide math grade level equivalency for each student.
- The program will diagnose areas of student strength and weakness in mathematics.

Results, Reports, Data Disaggregation

- National, State and local norms by grade must be available or in development for comparison.
- The design of the system must incorporate the ability to create longitudinal reports at the division, school, grade, teacher, student levels, parent and quantiles.

- The design of the system must include the ability to link student performance to student demographics, attendance, and services.
- The design of the system must include the ability to link student performance to teacher information over multiple years.
- The design of the system must include the ability to compare all levels of reports to defined groups within the division.
- The design of the system must include the ability to perform ad-hoc data analysis with detailed access restricted by role and location.
- The design of the system must include the ability to save and publish queries and reports.
- The design of the system must include the ability to perform cohort analysis over multiple years.
- Information on reliability, validity and measurement error along the performance spectrum must be provided.
- The system must allow for import from Oracle based Star Student and other data warehousing systems to include Grade Quick and Edline.
- The system must allow for fifteen user-defined demographic fields that can be used to create reports to address No Child Left Behind criteria.
- The system must report group mastery of each standard.
- The system must allow for students to be grouped by class/teacher.
- The system must provide log-on security by teacher and administrator that controls access to appropriate data.
- Reports should have the ability to display disaggregated results at each reporting level or unit of analysis.
- The system must allow for identification of groups of students that need remediation of particular skills and standards.

Specific Requirements

Data Disaggregation/Management

- Monitoring AYP for NCLB compliance
- Item Analysis tied to Virginia SOL
- Assessment scores according to Virginia SOL performance levels.
- Efficiency of data entry to expedite analysis of instruction.
- Flexibility of exportation of data to other systems such as Star Student and other data warehousing systems to include Grade Quick Excel and Edline.

Test Administration

- Ease of use for both administrators and teachers.
- Adaptability to each grade level (2-8)
- Immediate results
- Variation of student response to include short and long answers in addition to multiple choice.
- Long term cost effectiveness with on-line purchase to include maintenance per number of student and per teacher.
- Security and access levels.

Reports

- Individual students
- Classroom
- School
- Division
- Parent reports
- Charts and graphs
- Personalized learning plans

Technology Requirements

- The system must support multi-tiered user access levels to allow for student account management on a site-by-site basis rather than only at a global level.
- The systems should be SIF 2.0.9.1 Compliance for integration with the Division's SIS system. The vendor must an online site readiness check made available prior to testing to determine if all computer based testing conditions meet expected standards and are in working order.
- The system must notify the division automatically if any condition arises that would cause the test to become unavailable for students during testing windows.
- The system must allow for the creation of generic accounts to demonstrate the procedures to testing proctors and students prior to the testing window.
- The test delivery or caching system must be available on the local school network with appropriate licensing as required. The licenses must be eligible for all enhancements and patches through the life of the contract.
- The system must be fault tolerant sot that in the event of a power or network failure during testing the sessions can be resumed wit no loss of data.

IV. ITEMIZATION

Each proposal shall include a complete list of components and incremental pricing of all components included in each product proposed systems.

V. PROPOSAL ACCEPTANCE

The Owner is not required to accept the highest proposal, but instead will have the right to select the most qualified offeror and will then contract based on all factors involved in the proposal and reserves the right to accept or reject any or all proposals and to a award a contract in the best interest of the School System.

VI. MAINTENANCE SERVICE

The effective date of any maintenance service agreement will be renewable each year.

VII. PROPOSAL SUBMISSIONS – Proposals shall contain the following in the order listed:

1. The cover page of this Request for Proposal, which will contain:
 - a) Proprietary Information;
 - b) Original signature of an agent authorized to bind the company;
 - c) Requested contact information;
 - d) Company FEI/TIN number;
 - e) Acknowledgment of any addenda; and,
 - f) SCC Required form.
 - g) Completed and signed anticollusion/nondiscrimination clauses;
2. Offerors are encouraged to submit their Proposals on recycled paper and to use double-sided copying.
3. Proposals must be submitted utilizing the following requirements:
 - a) Offerors shall submit proposals in a sealed envelope or package, and label with the Request for Proposal's item number and the name and address of the Offeror. **Proposals received by telephone, telegraph, facsimile or any other means of electronic transfer shall not be accepted.**
 - b) Submit one (1) original (clearly marked original) and ten (10) copies of the proposal.
 - c) All proposals shall be received and time stamped in the **Purchasing Office, 101-F Mounts Bay Road, Williamsburg, Virginia 23185** no later than the Closing Date and Time shown on the cover page of this Request for Proposal. Any proposal received after the specified date

and time (2:01 PM EST or later) will not be considered and will be returned to the Offeror unopened.

- d) Proposals must include all elements noted in the “Preparation of Proposals” section below.
- e) Include a statement setting forth the basis for protection of proprietary information, if any, as detailed in the “Proprietary Information/Disclosure” section.
- f) Proposals are to be organized in the following tabs:

Tab 1 – Qualifications

Tab 2 – Experience

Tab 3 – Functionality of the Software

Tab 5 - Professional Development

Tab 6 - Schedule

Tab 7 – Cost

- 4. **References.** Provide three (3) client references similar in size and complexity to Williamsburg-James City County Public Schools that your firm is currently using. The information provided should include, but not be limited to, the names of clients, scope of work performed, dated of engagements and a contact person who can render an opinion on the quality of services provided by the firm.

References may be contacted at the discretion of WJCC. Typically, only references of those Offerors that receive high rankings are contacted. WJCC reserves the right to contact entities other than those listed or in addition to those furnished in the proposal. The Offeror shall furnish WJCC all such information and data as may be requested for this purpose.

Qualifications

- 1. Statement of the firm’s experience in furnishing/installing similar systems;
- 2. Complete description of components to be furnished/installed.
- 3. Brief description of the qualifications, skills, and references of the firm. To include person that will be responsible for performance of the services. Such description shall be a minimum, include:
 - Background information about the organization- e.g., philosophy, ownership, officers, and directors, the management structure, organization chart of the firm, the project team, etc.
 - Company size and location(s), number of installations of this product over the last five years.

Experience

- 1. The number of Virginia school districts that have implemented the product with a contract number.
- 2. The training and relevant experience of the test item bank writers.

Functionality of the Software

- 1. Universal screening instrument expectations have been met.
- 2. Report creation expectations have been met.
- 3. Technology requirements have been met.

Professional Development

- 1. The Contractor’s Professional Development Program should be designed to advance the capability and aptitude of teachers and support the implementation and use. These professional development programs must be provided by Contractor to WJCC staff, upon request and/or as needed.

Schedule

1. A work plan schedule.

Cost

1. Description of cost, and

Evaluation Criteria –Responses will be evaluated using the following criteria:

- a) Qualifications, experience/References (20 pts)
- b) Demonstrated understanding of the Statement of Needs and ability to meet RFP requirements (25 pts)
- c) Work Plan that demonstrates firm's ability to provide services (30 pts)
- d) Cost (25 pts.)

This solicitation is a sealed Request for Proposals. Proposals shall be evaluated by James City County Purchasing staff and representatives of Williamsburg-James City County Public Schools. Selection shall be made of the offeror(s) deemed to be most fully qualified and best suited among those submitting proposals, on the basis of the Evaluation Criteria listed above. Negotiations shall be conducted with the selected offeror(s) and an award shall be made to the offeror(s) that has made the best proposal.

Should the public body determine in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

The Notice of Award shall be posted on the bulletin board for public notices in the Purchasing Office, JCC Website and WJCC Public Schools Website.

VIII. Contract

The negotiated fee schedule based on the Specifications, and terms and conditions contained herein shall be incorporated into the Standard Williamsburg - James City County Public Schools Contract, along with the RFP, any addenda and modifications thereto and the successful offerors proposal any negotiated modifications. Any concerns regarding the Standard Contract shall be addressed within the proposal response.

The proposer shall inform him self in full of the conditions relating to the performance of the contract. Failure to do so shall not relieve the successful proposer of his obligations to carry out the provisions of this Request for Proposals and to complete the Scope of Work/Statement of Needs outlined herein.

The Owner is not required to accept the highest proposal, but instead will have the right to select the most qualified offeror and will then contract based on all factors involved in the proposal and reserves the right to accept or reject any or all proposals and to a award a contract in the best interest of the School System.

IX. MAINTENANCE SERVICE

The effective date of any maintenance service agreement will be renewable each year.

X. ITEMIZATION

Each proposal shall include a complete list of components and incremental pricing of all components included in each products proposed systems.

XI. TERM OF CONTRACT

The contract awarded to the successful offeror (Contractor) shall be for an initial term of One (1) year. The Owner reserves the right, at its sole option and discretion, to renew the initial contract upon written agreement of both parties

for a period of four (4) one-year optional renewals to be determined by the parties provided acceptable terms can be negotiated between the Owner and the Contractor.

XII. CANCELLATION OF CONTRACT

The Owner reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 30 days written notice to the Contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 days written notice to the other party. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding services required under the contract. In the event the Owner determines that termination is required, the exact date of such termination will be established by the Owner.

GENERAL TERMS AND CONDITIONS

- 1.0 Applicable Law and Courts: Any contract resulting from this solicitation shall be governed in any respects by the laws of Virginia, and any litigation with respect thereto shall be brought in the courts resolved in the Circuit Court of James City County, Virginia. The Contractor shall comply with applicable federal, state and local laws and regulations.
- 2.0 Authority: The Buyer has the sole responsibility and authority for issuance of invitations for bid, requests for proposal, placing and modifying invitations, requests issued by and for the Schools. In the discharge of these responsibilities, the Buyer may be assisted by delegating to other Purchasing Department staff. The Purchasing Agent is authorized to order supplies or services, enter into purchase negotiations or contracts, and obligate the Schools for indebtedness. Any purchase orders or contract made which is contrary to these provisions and authorities shall be of no effect and void, and the Schools shall not be bound thereby.
- 3.0 Ethics in Public Contracting: The provisions contained in Sections 2.2-4367 through 2.2-4377 of the Virginia Public Procurement Act as set forth in the 1950 Code of Virginia, as amended, shall be applicable to all contracts solicited or entered into by the WJCC Public Schools. By submitting their offers, all Offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Offeror, supplier manufacturer or subcontractor in connection with their bid, and that they have not conferred any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.
- 4.0 Immigration Reform and Control Act of 1986: By submitting their proposals, the offerors certify that they do not and will not during the performance of this contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.
- 5.0 Anti-trust: By entering into a contract, the Offeror conveys, sells, assigns, and transfers to the WJCC Public Schools all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust law of the United States and James City County, relating to the particular goods or services purchased or acquired by the WJCC Public Schools under said contract. Consistent and continued tie bidding could cause rejection of bids by the Purchasing Agent and/or investigation for Anti-Trust violations.
- 6.0 Payment to Subcontractors: A contractor awarded a contract under this solicitation is hereby obligated:
 1. To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the WJCC Public Schools for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
 2. To notify the WJCC Public Schools and the subcontractor(s) in writing, of the contractor's intention to withhold payment and the reason. The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from the WJCC Public Schools, except for amounts

withheld as stated above. The date of mailing of any payment by U.S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be obligation of the WJCC Public Schools.

- 7.0. Qualifications of Offerors: The WJCC Public Schools may make such reasonable investigations as deemed proper and necessary to determine the ability of the Offeror to perform the work/furnish the item(s) and the Offeror shall furnish to WJCC Public Schools all such information and data for this purpose as may be requested. The WJCC Public Schools reserves the right to inspect Offeror's physical facilities prior to award to satisfy questions regarding the Offeror's capabilities. The WJCC Public Schools further reserves the right to reject any proposal if the evidence submitted by or investigations of, such Offeror fails to satisfy the WJCC Public Schools that such Offeror is properly qualified to carry out the obligations of the contract and to complete the work/furnish the item(s) contemplated therein.
- 8.0. Testing and Inspection: The WJCC Public Schools reserves the right to conduct any test/inspection it may deem advisable to assure supplies and services conform to the specification.
- 9.0. Assignment of Contract: A contract shall not be assignable by the Contractor in whole or in part without the written consent of the Buyer.
- 10.1 Default: In case of failure to deliver goods or services in accordance with the contract terms and conditions, the WJCC Public Schools, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the WJCC Public Schools may have.
- 11.0. Non-Appropriation: All funds for payments of items ordered under this agreement are subject to the availability of WJCC Public Schools appropriation for this purpose. Payments during subsequent fiscal periods are dependent upon the same action. In the event of non-appropriation of funds by the WJCC Public Schools for the items under this contract, the WJCC Public Schools will terminate this contract. Written notice will be provided to the contractor as soon as possible after WJCC Public Schools action is completed.
- 12.0. Anti-Discrimination: By submitting their offer, Offerors certify to the WJCC Public Schools that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended as well as the Virginia Fair Employment Act of 1975, as amended, where applicable, and Section 2.2-4311 of the Virginia Public Procurement Act which provides:

In every contract over \$10,000 the provisions in A and B below apply:

1. During the performance of this contract, the Contractor agrees as follows
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, handicap, sex or national origin, except where religion, sex or national origin is a bonafide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices seeing forth the provisions of this nondiscrimination clause.
 - b. The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 - c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.
2. The Contractor will include the provisions of 1. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

- 13.0 Debarment Status: By submitting their bids or proposals, Bidders or Offerors certify that they are not currently debarred from submitting bids or proposals on contracts by any agency of WJCC Public Schools, nor are they an agent of any person or entity that is currently debarred from submitting bids or proposals on contracts by any agency of WJCC Public Schools.
- 14.0 Mandatory Use of WJCC Public Schools Terms and Conditions: Failure to submit the WJCC Public Schools proposal certification page/form provided for that purpose may be a cause for rejection of the proposal. Return of the complete document is required. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the WJCC Public Schools reserves the right to decide on a case by case basis, in its sole discretion, whether to reject such a proposal.
- 15.0 Invoices: Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the WJCC Public Schools IFB/RFP number and/or purchase order number.
- 16.0 Payment Terms: Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last.
- 17.0 Disputes: Contractual claims whether for money or other relief, shall be submitted in writing no later than sixty (60) days after final payment; however, written notice of the contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amount agreed due in the final payment. A written decision upon any such claims will be made by the WJCC Public Schools within thirty (30) days after submittal of the claim and any practically available additional supporting evidence required by the WJCC Public Schools. The Contractor may not institute legal action prior to receipt of WJCC Public Schools' decision on the claim unless he fails to render such decision within 120 days. The decision of Purchasing Agent or other signatory on the Contract shall be final and conclusive unless the Contractor within six (6) months of the date of the final decision on a claim, initiates legal action as provided in Section 2.2-4364 of the Code of Virginia. Failure of WJCC Public Schools to render a decision within 120 days shall not result in the Contractor being awarded the relief claimed nor shall it result in any other relief or penalty. The sole result of WJCC Public Schools' failure to render a decision within 120 days shall be the Contractor's right to immediately institute legal action. No administrative appeals procedure pursuant to Section 2.2-4365 of the Code of Virginia has been established for contractual claims under this Contract.
- 18.0 Protest of Award or Decision to Award: Any bidder or offeror who desires to protest the award or decision to award a contract shall submit such protest in writing to the Director of Finance no later than ten (10) days after the award announcement or the decision to award, whichever comes first. No protest shall be for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The Director of Finance shall issue a decision in writing within ten (10) days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten (10) days of the written decision by instituting legal action.
- 19.0 Official Not to Benefit: Each Offeror shall certify upon signing a bid that, to the best of their knowledge, no County/School official or employee having an official responsibility for the transaction or a member of his/her immediate family has received or will receive any financial benefit of more than nominal or minimal value relating to the award(s) of this contract. If such a benefit has been received or will be received, this fact shall be disclosed with the bid or proposal or as soon thereafter as it appears that such a benefit will be received. Failure to disclose the information prescribed above may result in suspension or debarment or recession of the contract made, or could affect payment pursuant to the terms of the contract.
- 20.0 Severability: In the event any provision shall be adjudged or decreed to be invalid, such ruling shall not invalidate the entire Agreement but shall pertain only to the provision in question and the remaining provisions shall continue to be valid, binding and in full force and effect.

- 21.0 **Indemnification:** The Contractor covenants to save harmless and effectually indemnify the County and or Public Schools against all actions and proceedings, costs, damages, expenses including attorney's fees, claims and demands whatsoever committed by the Contractor, his Sub-contractor, employees or agents by whosoever brought by reason of the performance of the said Work.
- 22.0 **Insurance:** By signing and submitting a bid or proposal under this solicitation, the Bidder or Offeror certifies that if awarded the contract, it will have the following insurance coverage at the time the work commences. Additionally, it will maintain these during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

During the period of the contract the Williamsburg-James City County Public Schools requires the Contractor to furnish certificates of insurance for the coverage required. A thirty (30) day notice of cancellation or non-renewal must be given to the WJCC. The Williamsburg-James City County Public Schools is to be named as an additional insured.

INSURANCE COVERAGE AND LIMITS REQUIRED:

		Commercial General Liability
Liability per year (aggregate)	\$1,000,000	
Liability per occurrence	\$1,000,000	
Medical Payments to Others	\$ 5,000	
Products and Completed Operation	\$2,000,000	
Personal and Advertising Injury	\$2,000,000	
Fire Legal Liability	\$ 50,000	
Business Automobile		
Policy Combined Single Limit	\$ 1,000,000	
Medical Payment	\$ 1,000	
Uninsured Motorist	\$1,000,000	
Workers Compensation and Employers Liability		
Statutory Coverage	Virginia	
Coverage B Limits	\$100/\$500/\$100,000	
Umbrella Liability		
Limits Per Occurrence	\$1,000,000	
Limits Per Year	\$1,000,000	

- 23.0 **Audit:** The Contractor hereby agrees to retain all books, records and other documents relative to this contract for five (5) years after final payment, or until audited by WJCC Public Schools, whichever is sooner. The agency, its authorized agents, and /or WJCC Public Schools auditors shall have full access to the right to examine any of said materials during said period.
- 24.0 **Competition Intended:** It is the intent of WJCC Public Schools that this Request for Proposal permit competition. It shall be the Offeror's responsibility to advise the Schools in writing if any language, requirements, specifications, etc., or any combinations thereof, inadvertently restrict or limit the requirements stated in this RFP to a single source. Such notification must be received by Williamsburg-James City County Public Schools Purchasing Department not later than ten (10) days prior to the date set for acceptance of proposal.
- 25.0 **WJCC Public Schools Right to Reject:** WJCC Public Schools reserves the right to reject any and all proposals received in response to this request, or to negotiate separately in any manner necessary to serve the best interest of the Schools. Offerors whose proposals are not accepted will be notified in writing.

- 26.0 Contract Inclusion: The contents of the proposal submitted by the successful Offeror and this RFP will become part of any contract awarded as a result of the Scope of Services contained herein. The successful Offeror(s) will be expected to sign a contract with WJCC Public Schools.
- 27.0 Addendum and Supplement to Request: If it becomes necessary to revise any part of this RFP or if additional data is necessary to enable an exact interpretation of provisions of this RFP, an addendum will be issued. Questions regarding the contents of the RFP shall be addressed to the Purchasing Department in writing by fax or in person no later than seven (7) business (working) days before the due date. Agents of the Purchasing Department will make every effort possible to dispense addendums to bidders; however, it is the responsibility of the offeror to ensure that he has received all addendums prior to submitting a bid/proposal.
- 28.0 Drug Free Workplace: The Contractor acknowledges and certifies that it understands that the following acts by the Contractor, its employees, and/or agents performing services on WJCC property are prohibited:
1. The unlawful manufacture, distribution, dispensing, possession or use of alcohol or other drugs; and,
 2. Any impairment or incapacitation from the use of alcohol or other drugs (except the use of drugs for legitimate medical purposes).
- The Contractor further acknowledges and certifies that it understands that a violation of these prohibitions constitutes a breach of contract and may result in default action being taken by WJCC in addition to any criminal penalties that may result from such conduct.
- 29.0 Notice of Award: Upon final approval by the WJCC School Board, notice of contract award will be publicly posted in the Purchasing Office.
- 30.0 Felony Conviction: The Contractor acknowledges and certifies that all employees of the contractor and sub-contractors performing work on school division property are not convicted of a felony or any offense involving the sexual molestation, physical or sexual abuse or rape of a child. The contractor further acknowledges and certifies that it understands that allowing any person subject to the direct or indirect control of the contractor to perform work or enter on school division property if such person has been convicted of such a crime constitutes a breach of contract and may result in default action being taken by the school division in addition to any criminal penalties that may result from such conduct.
- 31.0 All firms responding to this RFP shall be registered in the state of Virginia. Evidence of positive past performance shall be provided.
- 32.0 Authorization to Transact Business, State Registration of Contractors (if applicable) and County Business License. A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

Pursuant to competitive sealed bidding or competitive negotiation, all bidders or offerors organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 are required to include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.

Attention is directed to Chapter 11, title 54.1 of the Code of Virginia (Re: State registration of contractors), which requires that all bidders/offerors must show evidence of the proper license under the provision of this chapter before such bid is considered.

All firms doing business in James City County are required to be licensed in accordance with the County's "Business, Professional, and Occupational Licensing (BPOL) Tax" Ordinance. Wholesale and retail merchants without a business location in James City County are exempt from this requirement. Questions concerning the BPOL Tax should be directed to the Business License Inspector, Telephone (757)253-6698.

33.0 Precedence In Terms

The General Terms and Conditions shall apply in all instances. In the event of a conflict, the Special Terms & Conditions shall take precedence.



PRICING SCHEDULE – ATTACHMENT B
Universal Screening Instrument
RFP Number: 13-5450

Offerors should use the pricing table below to provide its pricing proposal for Mathematics Intervention Services. All costs must be included in the prices provided, including labor, material, equipment, supplies, technology resources, and travel. Any minimum charges for travel and/or teacher and administrative training must be disclosed in the proposal.

Description of Services	Estimated Quantity	Unit Price	Extended Price
Mathematics Intervention Program (per student)			
Mathematics Training (per teacher/administrator)			
Curriculum Materials (1% discount off publisher's price-a copy of publisher's invoice or receipt may be required at the time of Contractor's request for reimbursement)			
Data Management Services (per month)			
Reports (attach a separate sheet to detail the type of reports and the for each, if a separate price is applicable)			

ATTACHMENT C
NON COLLUSION AFFIDAVIT

James City County, Virginia project: RFP 13-5468

_____ Date: _____

COMMONWEALTH OF VIRGINIA
(City/County)

This day personally appeared before the undersigned, a Notary Public in and for the City/County and State aforesaid,

_____ who having been first duly sworn according to law, did depose and aver as follows:

- (a) That he/she is _____
(Owner, Partner, President, etc.)
of _____
(insert name of Bidder)
- (b) That he/she is personally familiar with the bid _____
submitted in connection with the above captioned Owner's project.
- (c) That said Bid was formulated and submitted in good faith as the true Bid of _____ said Bidder.
1. In preparation and submission of this Bid, the Bidder did not either directly or indirectly, enter into any combination or agreement with any person, firm or corporation or enter into any agreement, participate in any collusion, or otherwise take any action in the restraint of free, competitive bidding in violation of the Sherman act (15 U.S.C. Section 1) or sections 59.1-9.1 through 59.1-9.17 or sections 59.1-68.6 through 59.1-68.8 of the Code of Virginia.
 2. The undersigned Bidder hereby certifies that neither this Bid nor any claim resulting therefrom, is the result of, or affected by, any act of collusion with, or any act of another person or persons, firm or corporation engaged in the same line of business or commerce; and that no person acting for or employed by the Owner has any personal interest in this Bid.
 3. The undersigned hereby further agrees that upon request of the Owner, the records and books pertaining to this Bid will be voluntarily supplied, furnished, and released to the Owner.
 4. The undersigned hereby further certifies that the Bidder has not knowingly falsified, concealed, misled, or covered up by any trick, scheme, or device a material fact in connection with this bid. The undersigned also certifies that the Bidder has not made any false, fictitious or fraudulent statements or representations or made or used any false writing or documents knowing the same to contain any false, fictitious or fraudulent statement or entry in connection with this Bid.
 5. The undersigned further agrees that the Bidder will comply with section 2.2-4374 of the Code of Virginia, 1950, as amended, and has not bought or purchased any equipment from any person employed by the Owner as an independent contractor to furnish architectural or engineering services for this Project, nor from any partnership, association or corporation in which such architect or engineer has a pecuniary interest.

6. The undersigned further agrees to require all subcontractors, consultants, subconsultants, or any other persons, corporations, or legal entities providing or furnishing labor, material, equipment or work related to this project to execute this anti-collusion statement as a condition of payment. This paragraph is expressly limited to those in a direct contractual relationship with the undersigned of over \$10,000 except those persons whose only direct contractual agreement with the undersigned is an employment contract.
7. All Covenants and Agreements made by the Contractor are made by it on behalf of the Contractor and its successors, personal representatives and assigns, the same as if they had been specifically named in each instance.

And further this deponent saith not.

Subscribed and sworn to before me this _____ day of _____, 20____

My commission expires: 20____

Notary Public

JAMES CITY COUNTY

ATTACHMENT A--GENERAL TERMS & CONDITIONS and INSTRUCTIONS TO BIDDERS

These CONDITIONS AND INSTRUCTIONS TO BIDDERS shall be binding on all bidders or offerors and are incorporated by reference in all contracts resulting from any written Request for Quotes, Invitation to Bid or Request for Proposals issued, collectively the ("Request"), to which they are attached. Use of the term "bid" in these General Terms & Conditions and Instructions to Bidders is not intended to be restricted to an Invitation to Bid and shall also affect written Request for Quotes, Invitation to Bid or Request for Proposals. The Purchasing Office is responsible for the purchasing activity of James City County, a political subdivision of the Commonwealth of Virginia, and the James City Service Authority, herein referred to collectively as "James City County" or "County". Bidder/Offeror or their authorized representatives are expected to inform themselves fully as to the conditions, requirements, and specifications before submitting bids/proposals: failure to do so will be at the bidder's/offeror's own risk and except as provided by law, relief cannot be secured on the plea of error.

Subject to all Federal, State and local laws, policies, resolutions, regulations, rules, limitations and legislation including the County Purchasing Policy and the County Purchasing Manual, bids/proposals on all solicitations issued by the Purchasing Office will bind bidders/ offerors to applicable conditions and requirements herein set forth unless otherwise specified in the solicitation.

Cooperative Purchasing--James City County issues this solicitation in accordance with Section 2.2-4304 of the Virginia Public Procurement Act and Chapter 1, Section 5 of the James City County Purchasing Policy, and on behalf of the members of the Southeastern Virginia Governmental Purchasing Cooperative (SVGPC), as well as other public bodies, governmental jurisdictions and school divisions.

Bidders/Offerors are advised that all resultant contracts will be extended, with the authorization of the bidder/offeror, to other public bodies, governmental jurisdictions and school divisions as may be interested. Should other entities decide to use the final contract, the contractor shall deal directly with that jurisdiction or political subdivision concerning the placement of orders, issuance of the purchase orders, contractual disputes, invoicing and payments. James City County acts only as the "Contracting Agent" for these jurisdictions and political subdivisions. Failure to extend a contract to any jurisdiction will have no effect on consideration of your bid or offer.

It is the responsibility of the contractor to notify the public bodies, jurisdictions and political subdivisions of the availability of the contract.

Each participating public body, jurisdiction and political subdivisions has the option of executing a separate contract with the contractor. Such contracts may contain general terms and conditions unique to those jurisdictions and political subdivisions. If, when preparing such a contract, the general terms and conditions of a jurisdiction are unacceptable to the contractor, the contractor may withdraw its extension of the award to that jurisdiction.

James City County shall not be held liable for any costs or damages incurred by another public body or jurisdiction as a result of any award extended to that public body, jurisdiction or political subdivision by the contractor.

SVGPC members reserve the right to make awards to the lowest responsive and responsible offeror during the contract term. SVGPC members not explicitly named in the IFB are not obligated to participate, nor is the successful offeror obligated to contract with other SVGPC members.

City of Chesapeake
City of Hampton
City of Newport News
City of Norfolk
City of Portsmouth
City of Virginia Beach
City of Williamsburg
County of Gloucester
County of James City
County of King William
Thomas Nelson Community College
Newport News Redevelopment & Housing
DDS Tidewater Regional Office

Newport News Public Schools
Williamsburg/James City County Public Schools
York County Public Schools
Christopher Newport University
College of William & Mary
Norfolk State University
Tidewater Community College
Jamestown/Yorktown Foundation
Southeastern Public Service Authority
County of York
Portsmouth Redevelopment & Housing
CAS Norfolk Regional Office

1. **AUTHORITY AND COOPERATIVE PURCHASING**-The County Purchasing Director has the sole responsibility and authority for negotiating, placing and when necessary modifying every solicitation, contract and purchase order issued by James City County. In the discharge of these responsibilities, the County Purchasing Director may be assisted by assigned buyers. Unless specifically delegated by the County Purchasing Director, no other County officer or employee is authorized to order supplies or services, enter into purchase negotiations or contracts, or in any way obligate the government of the County of James City for an indebtedness. Any purchase order or contract made which is contrary to these provisions and authorities shall be of no effect and void and the County shall not be bound thereby.
2. **COMPETITION INTENDED:** It is the County's intent that this solicitation permit competition. It shall be the Bidder's/Offeree's responsibility to advise the Purchasing Director in writing in any language, requirement, specification, etc., or any combination thereof, stifles competition or inadvertently restricts or limits the requirements stated in this solicitation to a single source. The Purchasing Director must receive such notification not later than five (5) business days prior to the deadline set for acceptance of the bids/proposals.

CONDITIONS OF BIDDING

3. **CLARIFICATION OF TERMS** - If any Bidder/Offeree has questions about the specifications or other solicitation documents, the prospective Bidder/ Offeree should contact the buyer whose name appears on the face of the solicitation no later than five (5) business days prior to the date set for the opening of bids or receipt of proposals. Any revisions to the solicitation will be made only by addendum issued by the buyer. Notifications regarding specifications may not be considered if received in less than five (5) business days of the date set for opening of bids/receipt of proposals.
4. **USE OF COUNTY FORM AND TERMS AND CONDITIONS:** Failure to submit a solicitation on the official James City County form provided for that purpose or unauthorized modification of or additions to any portion of the solicitation documents may be a cause for rejection of the bid/proposal if the price, quality, quantity, delivery, necessary assurances, performance of the contract and other factors deemed important to the solicitation will be affected. James City County reserves the right to decide, on a case-by-case basis, in its sole discretion, whether to reject any bid or proposal which has been modified. The County shall not be responsible for any errors or omissions of the bidder/proposer. The solicitation shall be signed by a representative authorized to legally bind the firm. By signing the solicitation, the bidder/offeree agrees to the terms and conditions of the solicitation and certifies that they have inspected the job site(s) and are aware of the conditions under which the work must be accomplished. Claims, as a result of failure to inspect the job site, shall not be considered by the County.

5. LATE BIDS/PROPOSALS & MODIFICATION OF BIDS/ PROPOSALS:

Any bid/proposal/modification received at the office designated in the solicitation after the exact time specified for receipt of the bid/proposal/modification is considered a late bid/proposal/ modification.

James City County is not responsible for delays in the delivery of the mail by the U.S. Postal Service, private carriers or the inter-office mail system. It is the sole responsibility of the Bidder/Offeree to ensure their bid/proposal reaches the Purchasing Office by the designated date and hour.

- a. The official time used in the receipt of bids/ proposals is that time stamped by the automatic time stamp machine in the Purchasing Office. Date/time stamps marked after the designated time of receipt will be rejected.

- b. Late bids/proposals/modifications will be returned to the Bidder/Offeree UNOPENED, if solicitation number, acceptance date and Bidder/Offeree's return address is shown on the container.
- c. If the County closes its offices due to inclement weather scheduled bid openings or receipt of proposals will be extended to the next business day, same time.
- d. Vendors may modify their bids prior to the date and time specified for the bid opening. Facsimile modification of bids shall not be accepted unless the solicitation allowed such submission.

6. WITHDRAWAL OF BIDS/PROPOSALS:

A bidder/offeree for a contract other than for public construction may request withdrawal of his or her bid/proposal under the following circumstances:

- a. Bids/Proposals may be withdrawn on written request from the Bidder/offeree received at the address shown in the solicitation prior to the time of acceptance.
- b. Requests for withdrawal of bids/proposals after opening of such bids/proposals but prior to award shall be transmitted to the County Purchasing Director, in writing, accompanied by full documentation supporting the request. If the request is based on a claim of error, documentation must show the basis of the error. Such documentation may take the form of supplier quotations, vendor work sheets, etc. If bid bonds were tendered with the bid, the County may exercise its right of collection.
- c. Bids/proposals shall not be withdrawn after award of a contract or issuance of a purchase order. No plea or claim of mistake in a solicitation or resulting contract or purchase order shall be available as a defense in any legal proceeding brought upon a contract or purchase order awarded to a bidder/offeree as a result of the breach or nonperformance of such contract or purchase order.

No Bid/Proposal may be withdrawn under this paragraph when the result would be the awarding of the contract on another Bid/Proposal of the same bidder/offeree or of another bidder/offeree in which the ownership of the withdrawing bidder/offeree is more than five percent. In the case of Invitation for Bids, if a bid is withdrawn under the authority of this paragraph, the lowest remaining bid shall be deemed to be the low bid. No bidder/offeree who is permitted to withdraw a bid/proposal shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid/proposal was submitted.

7. **ERRORS IN BIDS/PROPOSALS** – When an error is made in extending total prices, the unit bid price will govern. Erasures in bids/proposals must be initiated by the bidder/offeree. Carelessness in quoting prices, or in preparation of bid/proposal otherwise, will not relieve the Bidder/Offeree of his responsibilities to provide the good or service. Bidders/Offerees are cautioned to recheck their bids/proposals for possible errors. Errors discovered after public opening cannot be corrected and the bidder will be required to perform if his or her bid is accepted.
8. **IDENTIFICATION OF BID/PROPOSAL ENVELOPE:** The signed bid/proposal and requested copies should be returned in a separate envelope or package, sealed and identified with the following information:

**ADDRESSED AS INDICATED ON PAGE 1
IFB/RFP NUMBER**

TITLE

BID/PROPOSAL DUE DATE AND TIME

VENDOR NAME AND COMPLETE MAILING ADDRESS (RETURN ADDRESS)

If a bid/proposal is not addressed with the information as shown above, the Bidder/Officer takes the risk that the envelope may be inadvertently opened and the information compromised, which may cause the bid/proposal to be disqualified. Bids/Proposals may be hand delivered to the designated location in the office issuing the solicitation. No other correspondence or other proposals should be placed in the envelope.

9. **ACCEPTANCE OF BIDS/PROPOSALS:** Unless otherwise specified, all formal bids/proposals submitted shall be valid for a minimum period of ninety (90) calendar days following the date established for acceptance. At the end of the ninety (90) calendar days the bid/proposal may be withdrawn at the written request of the Bidder/Officer. If the proposal is not withdrawn at that time it remains in effect until an award is made or the solicitation is canceled.

10. **PRICING:**

- a. Bidder warrants by virtue of bidding that prices, terms, and conditions quoted in his bid will be firm for acceptance for a period of ninety (90) days from the date of bid opening unless otherwise stated by the County or Bidder.
- b. Prices should be stated in units of quantity as specified in the bid form.
- c. Life cycle cost analysis may be considered when determining the lowest responsive and responsible bid. This analysis may consider, in addition to purchase price, any proposed upward or downward escalator clauses proposed for the initial contract term and any potential renewal terms; operating and related costs over the life of the item including maintenance, down time, energy costs, salvage value, etc.
- d. Bid prices shall be for complete installation ready for the County's use and shall include all applicable freight and installation charges; extra charges will not be allowed.
- e. When an annual contract is not requested by the County, and the bid is for products or services to be delivered on a one-time only or staggered basis, only firm pricing shall be given consideration. General terms such as "price in effect at time of delivery" shall not be considered for award.

11. **CONDITIONAL BIDS:** Conditional bids are subject to rejection in whole or in part if the price, quality, quantity, delivery, necessary assurances, performance of the contract and other factors deemed important to the solicitation will be affected.

12. **OPENING:** At the time fixed for the opening of responses to a bid, all bids will be opened and the names of the bidders and the amount bid shall be read aloud and made readily available to the public.

If a public opening of a Request for Proposals is held, only the names of the offerors will be read publicly.

13. **RESPONSE TO SOLICITATIONS:** In the event a vendor cannot submit a bid on a solicitation, the vendor is requested to return the solicitation cover sheet with an explanation as to why the vendor is unable to bid on these requirements. Because of the large number of firms listed on the County's Bidders List, it may be necessary to delete from this list the names of those persons, firms or corporations who fail to respond after having been invited to bid for three (3) successive solicitations. Such deletion will be made only after formal notification of the intent to remove the firm from the County's Bidder's List.

14. **BIDDER INTERESTED IN MORE THAN ONE BID:** If more than one bid is offered by any one party, either directly or by or in the

name of his or her clerk, partner, or other persons, all such bids may be rejected. A party who has quoted prices on work, materials, or supplies to a bidder is not thereby disqualified from quoting prices to other bidders or firms submitting a bid directly for the work, materials or supplies.

15. **TAX EXEMPTION:** The County is exempt from the payment of any federal excise or any Virginia sales tax. The price bid must be net, exclusive of taxes. Tax exemption certificates will be furnished if requested by the Bidder/Officer.

16. **DEBARMENT STATUS:** By submitting their bids/proposals, Bidders/Officers certify that they are not currently debarred by James City County, the Commonwealth of Virginia, the Federal Government, any local government or government agency/entity/authority from submitting bids or proposals on contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

17. **ETHICS IN PUBLIC CONTRACTING:** The provisions contained in Sections 2.2-4367 through 2.2-4377, Code of Virginia, as amended, shall be applicable to all contracts solicited or entered into by James City County. By submitting their bids/proposals, all Bidders/Officers certify that their bids/proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Bidder, Officer, supplier, manufacturer or subcontractor in connection with their bid/proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

The Bidder/Officer certifies that to the best of his knowledge, no employee of the County, nor any member thereof, nor any public agency or official impacted by the solicitation or resulting contract has any pecuniary interest in the business of the Bidder/Officer, and that no person associated with the Bidder/Officer has any interest that would conflict in any manner with the performance of the contract resulting from this solicitation.

18. **PERFORMANCE BOND:** When requested in the bid, the County shall require the successful bidder to furnish a performance bond and labor and material payment bond with surety satisfactory to the County Attorney in the amount of the contract price at a time of or prior to execution of the contract.

19. **NO CONTACT POLICY:** No Bidder/Officer shall initiate or otherwise have contact related to the solicitation with any County employee, other than the Purchasing Office, after the date and time established for receipt of bids/proposals. Any contact initiated by a Bidder/Officer with any County representative, other than the Purchasing Office, concerning this solicitation is prohibited and may cause the disqualification of the Bidder/Officer from this procurement process.

20. **LICENSES, PERMITS, AND FEES:** All bids submitted shall have included a list of any business and professional licenses, permits, or fees required by James City County or the Commonwealth of Virginia.

SPECIFICATIONS

21. **BRAND NAME OR EQUAL ITEMS:** Unless otherwise provided in the solicitation, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired, and any article which the County in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The Bidder is responsible to clearly and specifically indicate the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable James City County to determine if the product offered meets the

requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding, only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data to enable James City County to determine if the product offered meets the requirements of the solicitation may result the bid being declared non-responsive. Unless the Bidder clearly indicates in its bid/proposal that the product offered is "equal" product, such bid/proposal will be considered to offer the brand name product referenced in the solicitation.

22. **FORMAL SPECIFICATIONS:** When a solicitation contains a specification which states no substitutes, no deviation therefrom will be permitted and the bidder will be required to furnish articles in conformity with that specification.
23. **OMISSIONS & DISCREPANCIES:** Any items or parts of any equipment listed in this solicitation which are not fully described or are omitted from such specification, and which are clearly necessary for the completion of such equipment and its appurtenances, shall be considered a part of such equipment although not directly specified or called for in the specifications.

The Bidder/Offeree shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances., etc., shall be construed as to the minimum requirements of these specifications.

24. **EQUIPMENT STANDARDS.** Any equipment delivered shall be standard new equipment, latest model, the best quality, and the highest grade work, except as otherwise specifically stated in bid. Any part of nominal appurtenances which are usually provided in the manufacturer's stock model shall be furnished.
25. **ANNUAL CONTRACT USAGE REQUIREMENTS:** Whenever a bid is sought seeking a source of supply for an annual contract for products or services, the quantities or usage shown are estimates only. No guarantee or warranty is given or implied by James City County as to the total amount that may not be purchased from any resulting contracts. These quantities are for Bidder's information only and will be used for tabulation and presentation of bid.

AWARD

26. **AWARD OR REJECTION OF BIDS:** The Purchasing Director shall award the contract to the lowest responsive and responsible bidder complying with all provisions of the IFB, provided the bid price is reasonable and it is in the best interest of the County to accept it. Awards made in response to a RFP will be made to the highest qualified offeror whose proposal is determined, in writing, to be the most advantageous to the County taking into consideration the evaluation factors set forth in the RFP. The Purchasing Director reserves the right to award a contract by individual items, in the aggregate, or in combination thereof, or to reject any or all bids/proposals and to waive any informality in bids/proposals received whenever such rejection or waiver is in the best interest of the County. Award may be made to as many bidders/offerors as deemed necessary to fulfill the anticipated requirements of James City County. The Purchasing Director reserves the right to negotiate with the lowest responsive, responsible bidder should bids exceed available funds. The Purchasing Director shall reject the bid if the bidder is deemed to be a non-responsive or non-responsive bidder.
27. **QUALIFICATIONS OF BIDDERS OR OFFERORS:** James City County may make such reasonable investigations as deemed proper and necessary to determine the ability of the Bidder/Offeree to perform the work/furnish the item(s) and the Bidder/Offeree shall furnish to James City County all such information and data for this purpose as may be requested.

James City County reserves the right to inspect Bidder's/Offeree's physical facilities prior to award to satisfy questions regarding the Bidder's/Offeree's capabilities. James City County further reserves the right to reject any bid or proposal if the evidence submitted by or investigations of, such Bidder/Offeree fails to satisfy James City County that such Bidder/Offeree is properly qualified to carry out the obligations of the contract and to complete the work/furnish the item(s) contemplated therein.

28. **TIE BIDS:** In the case of a tie bid, the County may give preference to goods, services and construction produced in the County or provided by persons, firms or corporations having principal places of business in the County. If such choice is not available, preference shall then be given to goods and services produced in the Commonwealth pursuant to Code of Virginia § 2.2-4324. If no County or Commonwealth choice is available, the tie shall be decided by lot.
29. **FACTORS OTHER THAN PRICE IN AWARD DECISION:** The following factors, in addition to price (as they apply), shall be a consideration in the award decision:
 - a. The quality of performance/workmanship of previous contracts, services or products, or references which attest to other specific experiences;
 - b. The timely completion of previous contracts or services or the timely delivery of past orders; or references which attest to other specific experiences;
 - c. The sufficiency of financial resources and its impact on ability of the bidder to perform the contract or provide the services;
 - d. The County reserves the right to conduct on-site inspections of any bidder's facilities prior to award. The results of said inspection will be considered by the County in determining bidder's capabilities of successfully administering to this contract;
 - e. The ability and availability of the bidder to provide both quality and timely maintenance, service, and/or parts;
 - f. The resale value, life cycle costing, and value analysis of a product;
 - g. The availability and capability of local and regional vendor support as it affects the quantity, quality, and timeliness of the work or products required;
 - h. Delivery of a product and timely completion of a project as stated by vendor in bid;
 - i. Substantial compliance or noncompliance with specifications set forth in bid as determined by the County;
 - j. Product or parts inventory capability as it relates to a particular bid; and
 - k. Results of product testing.

CONTRACT PROVISIONS

30. **APPLICABLE LAW AND COURTS:** Any contract resulting from this solicitation shall be governed in any respects by the laws of Virginia, and any litigation with respect thereto shall be brought in the Circuit Court or General District Court of James City County, Virginia. The Contractor shall comply with applicable federal, state and local laws and regulations.
31. **IMMIGRATION REFORM AND CONTROL ACT OF 1986:** By entering into this contract, vendor certifies that it does not and will not during the performance of this contract knowingly employ an unauthorized alien as defined in, or otherwise violate the provisions of, the federal Immigration Reform and Control Act of 1986, as amended.

32. OBLIGATIONS OF COUNTY AND CONTRACTOR:

County: The County shall furnish to the contractor all available information as listed in the solicitation that may be useful for the contract work. The County shall assist the contractor in obtaining access to enter upon public and private property as required to perform the contract work. The County shall designate a representative who shall serve as the principal contact and give direction to the contractor throughout the duration of the contract. Contractor: The contractor represents that he has, or shall secure at his expense, all personnel, including subcontractors, required to perform and complete the Scope of Work.

33. CONFIDENTIALITY AND OWNERSHIP OF DATA: Any reports, information, intellectual property, data, drawings, specifications, estimates and summaries given to or prepared or assembled by the contractor under the Scope of Work of the contract, shall not be made available to any individual or organization by the contractor without prior written approval of the County. All of these items shall become the property of the County upon payment of fees as required by the contract.

34. REPORTS OF WORK: The County and the contractor shall schedule progress meetings at appropriate intervals throughout the duration of the contract. These meetings shall provide for the exchange of information related to the status of the Scope of Work, anticipated progress and any problems that have occurred.

35. ANTI-TRUST: By entering into a contract, the contractor conveys, sells, assigns, and transfers to James City County all rights, title and interest in and to all causes of the action it may now have or hereafter acquire under the antitrust law of the United States and James City County, relating to the particular goods or services purchased or acquired by James City County under said contract. Consistent and continued tie bidding could cause rejection of bids by the Purchasing Director and/or investigation for Anti-Trust violations.

36. PAYMENT TERMS: Unless otherwise provided in the solicitation payment will be made thirty (30) days after receipt of a proper invoice with complete supporting documentation, or thirty (30) days after receipt of all goods or acceptance of work, whichever is the latter. For construction projects, the County may retain five percent (5%) of the total amount of each partial progress payment to assure faithful performance of the contract by the contractor. The County will release all retainage upon final payment.

- a. Invoices for items/services ordered, delivered/performed and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the contract number, purchase order number, and any federal employer identification number.
- b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- c. The date of payment shall be deemed the date of postmark in all cases where payment is made by mail.

37. PAYMENT TO SUBCONTRACTORS: A contractor awarded a contract under this solicitation is hereby obligated:

- a. To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from James City County for the proportionate share of the payment received for work performed by the subcontractor(s) under the contract; or
- b. To notify James City County and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

The contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the contractor that remain unpaid seven (7) days following receipt of payment from James City County, except for amounts withheld as

stated in b above. The date of mailing of any payment by U.S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of James City County.

38. ASSIGNMENT OF CONTRACT: A contract shall not be assignable by the Contractor in whole or in part without the written consent of the Purchasing Director.

39. DEFAULT: In case of failure to deliver goods or services in accordance with the contract terms and conditions, James City County, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to another remedies which James City County may have.

40. AVAILABILITY OF FUNDS: It is understood and agreed between the contractor and the County herein that the County shall be bound hereunder only to the extent of the funds available or which hereafter become available for the purpose of the contract.

41. ANTI-DISCRIMINATION: By submitting their bids/proposals, Bidders/Offerors certify to James City County that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and the Code of Virginia § 2.2-4311, as amended. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts shall be subject to audit by the public body. (Code of Virginia § 2.2-4343.1.E).

In every contract over \$10,000 the provisions in a and b below apply:

- a. During the performance of this contract, the Contractor agrees as follows:
 - 1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - 2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 - 3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section.
- b. The Contractor will include the provisions of a. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

42. **NONDISCRIMINATION OF CONTRACTORS:** A bidder, offeror, or contractor shall not be discriminated against in the solicitations or award of this contract because of race, religion, color, sex, national origin, age or disability or against faith-based organizations. If the award of this contract is made to a faith-based organization and an individual who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, James City County shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, service, or disbursements from an alternative provider.

43. **INVOICES:** Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the IFB/RFP number and/or purchase order number.

44. **PRECEDENCE OF TERMS:** In the event there is a conflict between the General Terms and Conditions and any Special Terms and Conditions, the Special Terms and Conditions shall apply.

45. **CHANGES TO THE CONTRACT:** There shall be no extra work allowed on the contract without prior written authorization in the form of a change order signed by the Purchasing Director or the County Administrator. No officer, agent or employee of the County is authorized to give verbal instructions to increase the Scope of Work and the contractor shall not use verbal instructions as the basis for additional costs. Changes can be made to the contract in any of the following ways by the issuance of a Change Order:

a. The parties may agree to modify the scope of the contract. An increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.

b. James City County may order changes within the general scope of the contract at any time by written notice to the Contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the County a credit for any savings. Said compensation shall be determined by one of the following methods.

- 1) By mutual agreement between the parties in writing; or
- 2) By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the contractor accounts for the number of units of work performed, subject to the County's right to audit the Contractor's records and/or determine the correct number of units independently; or
- 3) By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the County with all vouchers and records of expenses incurred and savings realized. The County shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Office within thirty (30) days from the date of receipt of the written order from the Purchasing Office. If the parties fail to agree on an amount of adjustment, the questions of an increase or decrease in the contract

price or time for performance shall be resolved in accordance with the procedures for relieving disputes provided by the Disputes Clause of the contract. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the County or with the performance of the contract generally.

- c. No modification for a fixed price contract may be increased by more than 25% or \$50,000, whichever is greater, without the advanced written approval of the Board of Supervisors.

46. **AUTHORIZATION TO TRANSACT BUSINESS, STATE REGISTRATION OF CONTRACTORS (IF APPLICABLE) AND COUNTY BUSINESS LICENSE:** A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

Pursuant to competitive sealed bidding or competitive negotiation, all bidders or offerors organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 are required to include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.

Attention is directed to Chapter 11, title 54.1 of the Code of Virginia (Re: State registration of contractors), which requires that all bidders must show evidence of the proper license under the provision of this chapter before such bid is considered.

All firms doing business in James City County are required to be licensed in accordance with the County's "Business, Professional, and Occupational Licensing (BPOL) Tax" Ordinance. Wholesale and retail merchants without a business location in James City County are exempt from this requirement. Questions concerning the BPOL Tax should be directed to the Business License Inspector, telephone (757) 253-6698.

47. **PROPRIETARY INFORMATION:** Section 2.2-4342F of the Code of Virginia states: "Trade secrets or proprietary information submitted by a bidder, offeror, or contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder, offeror, or contractor must invoke the protections of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary." Declaring an entire bid or proposal response as proprietary is unacceptable.

48. **INDEMNIFICATION:** The Contractor hereby binds himself and his successors to indemnify, defend, and save harmless James City County, its officers, agents or employees, from all suits and actions of every name and description brought against it or them, and all costs or damages to which it or they may be put, on account of, or by reason of any injury or alleged injury to the person or property of another, resulting from or on account of the negligent acts, errors or omissions, recklessness or intentionally wrongful conduct of the Contractor or his agents in the performance of the contract; and that the whole or so much of the moneys due to the contractor under and by virtue of this Contract, as such or may be considered necessary by the County, shall and may be retained until all such suits and claims for damages as aforesaid shall have been settled, and evidence to that effect furnished to the satisfaction of the County. The said Contractor further agrees to indemnify and save harmless James City County against any and all claims, suits or demands that may accrue to, be suffered by, or adjudicated against it by reason of any injury sustained by any of the Contractor's employees in and about the said work, under and pursuant to the provisions of the

Workman's Compensation Law or any amendments thereto, and the Contractor shall produce certificates or other satisfactory evidence of ample protection against such liability.

49. **NOTICE OF REQUIRED DISABILITY LEGISLATION:** The County government is required to comply with State and Federal disability legislation: The Rehabilitation Act of 1973 Section 504, The Americans with Disabilities Act (ADA) of 1990 Title II and the Virginia with Disabilities Act of 1990. Specifically, the County, may not, through its contractual and/or financial arrangements, directly or indirectly avoid compliance with Title II or the Americans with Disabilities Act, Public Law 101-336, which prohibits discrimination by public entities on the basis of disability. Subtitle A protects qualified individuals with disability from discrimination on the basis of disability in the services, programs, or activities of all State and local governments. It extends the prohibition of discrimination in federally assisted programs established by the Rehabilitation Act of 1973 Section 504 to all activities of State and local governments, including those that do not receive Federal financial assistance, and incorporates specific prohibitions of discrimination on the basis of disability in Titles I, III, and V of the Americans with Disabilities Act. The Virginians with Disabilities Act of 1990 follows the Rehabilitation Act of 1973 Section 504.

50. **DRUG-FREE WORKPLACE:** During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "*drug-free workplace*" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

51. **TERMINATION:** Subject to the provisions below, the contract may be terminated by the County upon thirty (30) days advance written notice to the other party. Upon receipt of a notice of termination, the contractor shall cease all work underway on behalf of the County unless advised by the County to do otherwise. In the event of termination, Contractor shall be compensated only for the services as set forth in the contract provided to the satisfaction of the County and expenses incurred as of the date of termination. Any contract cancellation notice shall not relieve the contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

- a. Termination for Convenience: In the event that the contract is terminated upon request and for the convenience of the County, without the required thirty (30) days advance notice, then the County shall be responsible for payment of services up to the termination date.
- b. Termination for Cause: Termination by the County for cause, default or negligence on the part of the contractor shall be excluded from the foregoing provision; termination costs, if any shall not apply. However, pursuant to the Default paragraph of these General Conditions, the County may hold the contractor responsible for any resulting additional purchase and administrative costs. Any payment due to the contractor at the time of termination may be adjusted to the extent of any additional costs occasioned to the County by reason of the contractor's default. The thirty (30) days

advance notice requirement is waived in the event of Termination for Cause.

- c. Termination Due to Unavailability of Funds in Succeeding Fiscal Years: When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year, the contract shall be canceled.

52. **CONTRACTOR RESPONSIBILITY FOR COUNTY PROPERTY:** The Contractor shall be responsible for damages to County property caused by work performed by itself or its subcontractors. The Contractor shall be responsible for maintaining the area surrounding and adjoining the work site in their current condition. Property damage to surrounding or adjoining areas caused directly or indirectly by actions or omissions of the Contractor shall be replaced or remedied by the Contractor, to the satisfaction of the County, at the Contractor's expense.

53. **COPYRIGHTS OR PATENT RIGHTS:** The bidder certifies by submission of bid that there has been no violation of copyrights or patent rights in manufacturing, producing, or selling the product or services shipped or ordered as a result of this bid. The successful bidder shall, at his own expense, defend any and all actions or suits charging such infringement, and will save James City County, its officers, employees, and agents harmless from any and all liability, loss, or expense occasioned by any such violation.

54. **DELIVERY:** In the appropriate space, the bidder shall state the time of proposed delivery or project completion in number of calendar days. Unless otherwise specified, calendar days shall be presumed. Unless otherwise specified, quote the earliest delivery possible, as this may be considered a factor in making award. Delivery expressed in calendar days may be given preference over such general terms as "stock immediately," and "as soon as possible." As time will be of the essence for any orders places as a result of this bid, the County reserves the right to cancel such orders, or any part thereof, without obligation, if delivery is not made at the time(s) specified on bid form.

55. **INDEPENDENT CONTRACTOR:** The contractor shall be legally considered an independent contractor and neither the contractor nor its employees shall, under any circumstances, be considered servants or agents of James City County or James City Service Authority; and the County shall be at no time legally responsible for any negligence or other wrongdoing by the contractor, its servants, or agents. The County shall not withhold from the contract payments to the contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to the contractor. Further, the County shall not provide to the contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by the County for its employees.

56. **SUBCONTRACTS:** No portion of the work shall be subcontracted without prior written consent of the Purchasing Director. In the event that the contractor desires to subcontract some part of the work, the contractor shall furnish the Purchasing Director the names, qualifications and experience of the proposed subcontractors. The contractor shall remain fully liable and responsible for the work to be done by its subcontractors and shall assure compliance with all requirements of the contract.

57. **HOLIDAYS:** The Contractor shall receive approval of the County, in advance, of any work to be performed on Holidays. James City Service Authority/James City County observes the following Holidays:

New Year's Day	1 st day of January
Martin Luther King's Birthday	3 rd Monday in January
President's Day	3 rd Monday in February
Memorial Day	Last Monday in May
Independence Day	4 th day in July
Labor Day	1 st Monday in September
Veteran's Day	11 th day in November
Thanksgiving Day	4 th Thursday in November

Day after Thanksgiving	4 th Friday in November
Christmas Eve	24 th day in December
Christmas Day	25 th day of December

DELIVERY PROVISION

58. **SHIPPING INSTRUCTIONS-CONSIGNMENT:** Unless otherwise specified in the solicitation each case, crate, barrel, package, etc., delivered under the contract must be plainly stenciled or securely tagged, stating the Contractor's name, purchase order number, and delivery address as indicated in the order. Where shipping containers are to be used, each container must be marked with the purchase order number, name of the Contractor, the name of the item, the item number, and the quantity contained therein. Deliveries must be made within the hours of **8:00 a.m. – 3:00 p.m.** Deliveries at any other time will not be accepted unless specific arrangements have been previously made with the designated individual at the delivery point. No deliveries will be accepted on Saturdays, Sundays and holidays unless previous arrangements have been made. It shall be the responsibility of the contractor to insure compliance with these instructions for items that are drop-shipped.
59. **RESPONSIBILITY FOR SUPPLIES TENDERED:** The Contractor shall be responsible for the materials or supplies covered by the contract until they are delivered at the designated point, and a physical inspection is made and material is requested or rejected, but the Contractor shall bear all risk on rejected materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the County may return the rejected materials or supplies to the Contractor at his or her risk and expense or dispose of them as its own property.
60. **TESTING AND INSPECTIONS:** James City County reserves the right to conduct any test/inspection it may deem advisable to assure supplies and services conform to the specification. Inspection and acceptance of materials or supplies will be made after delivery at destinations herein specified unless otherwise stated. If inspection is made after delivery at destination herein specified, the County will bear the expense of inspection except for the value of samples used in case of rejection. Final inspection shall be conclusive except in regard to latent defects, fraud or such gross mistakes as to amount to fraud. Final inspection and acceptance or rejection of the materials or supplies will be made as promptly as practicable, but failure to inspect and accept or reject materials or supplies shall not impose liability on the County for such materials or supplies as are not in accordance with the specifications.
61. **COMPLIANCE:** Delivery must be made as ordered and in accordance with the solicitation or as directed by the Purchasing Office when not in conflict with the bid/contract. The decision as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of goods by the purchaser shall rest with the Contractor. Any request for extension of time of delivery from that specified must be approved by the Purchasing Office, such extension applying only to the particular item or shipment affected. Should the Contractor be delayed by the County, there shall be added to the time of completion a time equal to the period of such delay caused by the County. However, the contractor shall not be entitled to claim damages of extra compensation for such delay or suspension. These conditions may vary for construction contracts.
62. **POINT OF DESTINATION:** All materials shipped to the County must be shipped F.O.B. DESTINATION unless otherwise stated in the contract. The materials must be delivered to the "Ship To" address indicated on the purchase order.
63. **REPLACEMENT:** Materials or components that have been rejected by the Purchasing Office, in accordance with the terms of

the contract, shall be replaced by the Contractor at no cost to the County.

64. **PACKING SLIPS OR DELIVERY TICKETS:** All shipments shall be accompanied by Packing Slips or Delivery Tickets and shall contain the following information for each item delivered:
- Purchase Order Number/Contract Number
 - Name of Article and Stock Number,
 - Quantity Ordered,
 - Quantity Shipped,
 - Quantity Back Ordered,
 - The Name of the Contractor.

Contractors are cautioned that failure to comply with these conditions shall be considered sufficient reason for refusal to accept the goods.

65. **SAMPLES:** Evidence in the form of samples may be requested if brand being quoted upon is other than as specified. The County reserves the right to request that such samples be furnished at the time of bid opening. The County also reserves the right to request samples after the date of bid opening. Requested samples must be furnished free of expense to the County and if not used in testing or destroyed, will, upon request, be returned at the bidder's expense.

BIDDER/CONTRACTOR REMEDIES

66. **PROTEST OF AWARD OR DECISION TO AWARD:** Any Bidder/ Offeror who desires to protest the award or decision to award a contract, by James City County shall submit such protest in writing to the County no later than ten (10) days after public notice of the award or announcement of the decision to award, whichever comes first. No protest shall lie for a claim that the selected bidder/Offeror is not a responsible Bidder/Offeror. The written protest shall include the basis for the protest and the relief sought. The Purchasing Director shall issue a decision in writing within ten (10) days stating the reasons for the action taken. This decision shall be final unless the bidder/offeror appeals within ten (10) days of the written decision by instituting legal action. Nothing in this paragraph shall be construed to permit an offeror to challenge the validity of the terms or conditions of the solicitation.
67. **DISPUTES:**
Claims. Written notice of the Contractor to file a claim must be given at the time of the occurrence or beginning of the work upon which the claim is based. Such claims, whether for money or other relief, shall be submitted in writing to the County's Purchasing Director no later than sixty (60) days after final payment. The Purchasing Director shall give written notification of the final decision on such claim to the Contractor within thirty (30) days of the date the claim was received. The Contractor may not institute legal action before receiving the Purchasing Director's final written decision, unless the Purchasing Director fails to render such decision within the specified time. Pendency of claims shall not delay payment of amounts agreed due in the final payment. (Code of Virginia, § 2.2-4363).

Claims Relief. Under certain circumstances beyond the control of the Contractor, such as acts of God, sabotage, and fire or explosion not caused by negligence of the Contractor or its agent, the Purchasing Director may extend the time limit for performance required by this Contract. Any such extension must be issued in writing and signed by the Purchasing Director.